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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GREGORY P. BURLESON,

Defendant.

2:16-CR-00046-GMN-PAL

**GOVERNMENT'S RESPONSE IN
OPPOSITION TO MOTION FOR
REVOCATION OF PRETRIAL
DETENTION ORDER**

The United States, by and through the undersigned, respectfully submits its Response in Opposition to defendant Gregory P. Burleson's Motion to Reconsider Magistrate's Decision to Deny Pretrial Release Doc. #214 ("Motion for Revocation"). As demonstrated below, Burleson submits nothing to rebut the presumption of detention that attaches in this case, Burleson having been charged with four counts of Section 924(c) violations. Moreover, the Government has proffered overwhelming evidence to show that Burleson presents both a danger to the community and a risk of flight. Accordingly, the Motion for Revocation should be denied.

On March 2, 2016, a federal Grand Jury seated in the District of Nevada returned a Superseding Criminal Indictment, charging defendant Gregory Burleson

1 (“Burleson”) and 18 other defendants with, among other things, conspiring to
2 assault federal officers, obstruct justice, extort federal officers, and use and carry a
3 firearm in relation to a crime of violence, and the substantive offenses that comprise
4 the objects of the conspiracy, all in violation of Title 18, United States Code,
5 Sections 371; 372; 111(a)(1) and (b); 1503; 1951; and 924(c).

6 On March 3, 2016, Burleson was arrested in the District of Arizona pursuant
7 to an arrest warrant issued from the Superseding Indictment. Burleson made an
8 initial appearance, waived an identity hearing, and requested that his detention
9 hearing be held in this District. On March 16, 2016, Burleson appeared in this
10 District and the Government moved for detention both as a risk of flight and a
11 danger to the community, filing a Memorandum in Support of Its Motion for
12 Detention, which proffered additional facts supporting pretrial detention. Doc.
13 #127.

14 On March 8, 2015, Burleson file a memorandum for pretrial release and on
15 March 21, 2016, Burleson received a fully-adjudicated detention hearing before
16 United States Magistrate Judge Peggy A. Leen. *See* Exhibit A (Transcript of
17 Burleson’s March 21, 2016 Detention Hearing). At the hearing, the Government
18 argued for detention and also relied upon the facts charged in the Superseding
19 Indictment and those proffered in its memorandum in support of its motion for
20 detention.
21

22 At the conclusion of the detention hearing, Judge Leen ordered Burleson
23 detained pending trial finding that the government had shown by clear and
24 convincing evidence that Burleson is a danger to the community. Judge Leen made

1 findings on the record and issued the following written findings:

2 The defendant is ordered detained as a danger to the community as
3 that term is defined by The Bail Reform Act for the following reasons:
4 The defendant is charged with crimes of violence involving the use of
5 weapons for which the law creates a rebuttable presumption that he
6 should be detained. In this case, the weight of the evidence is very
7 strong. Both video and photographic evidence depicts the defendant's
8 armed participation in the advance on the BLM impoundment site on
9 the day of April 12, 2014. The defendant is not being prosecuted for his
10 speech or his beliefs, but for his conduct. The defendant's speech and
11 his interviews, including a tape-recorded conversation with an FBI
12 Agent acknowledged what he did and that he was proud of what he
13 did. The defendant made statements a month before traveling to
14 Bunkerville, NV that "it's time to start shooting cops." Some of the
15 defendant's most inflammatory statements were made afterwards
16 about "being a berserker" and "wanting to die in battle," and he
17 continually made statements along those lines, about what would
18 happen if anyone came to arrest any of the people who were involved
19 in the Bunkerville incident, and about "burning people to the ground,
20 including their wives and their children." The defendant bragged
21 about having federal agents in his sights. Although the defendant is
22 blind, the Court does not believe for a minute that the views the
23 defendant espouses are just going to go away and that he will suddenly
24 abide by Court orders.

Doc. #196.

On March 31, 2016, Burleson filed a Motion for Revocation pursuant to 18
U.S.C. § 3145(b). This Court reviews the order of the Magistrate Judge de novo.
United States v. Koenig, 912 F.2d 1190, 1191 (9th Cir. 1990); *see also United States*
v. King, 849 F.2d 485, 491 (11th Cir. 1988); *United States v. Maull*, 773 F.2d 1479,
1481 (8th Cir. 1985) (en banc); *United States v. Leon*, 766 F.2d 77, 80 (2d Cir. 1985).
This Court can review the evidence presented to the magistrate judge and makes its
own independent determination. *Koenig*, 912 F.2d at 1193. "Clearly, the district
court is not required to start over in every case, and proceed as if the magistrate's
decision and findings did not exist..." *Id.* However, this Court can also hear

1 additional evidence and argument. *Id.*

2 The Government adopts and incorporates by reference the Superseding
3 Indictment, Doc. #27, its Memorandum in Support of Pretrial Detention, Doc. #150
4 and all the evidence and arguments it proffered at the detention hearing. It is the
5 Government's understanding that Pretrial Services will provide the Court with
6 Burleson's pretrial reports prepared in the District of Arizona and in this District.

7 The Superseding Indictment charging four violations of 18 U.S.C. § 924(c)
8 provides a presumption, subject to rebuttal, that no condition or combination of
9 conditions will reasonably assure the appearance of the defendant as required, and
10 the safety of the community. *See* 18 U.S.C. § 3142(e)(3)(B). Because of the nature
11 and circumstances of the offenses charged against Burleson which give rise to the
12 presumption of detention, the Government submits that no evidence will be
13 sufficient to rebut the presumption of detention. However, even if rebutted, the
14 presumption "remains in the case as an evidentiary finding militating against
15 release, to be weighed along with other evidence relevant to factors listed in
16 § 3142(g)." *See United States v. Hir*, 517 F.3d 1081, 1086 (9th Cir. 2008) *quoting*
17 *United States v. Dominguez*, 783 F.2d 702, 707 (7th Cir. 1986).

18
19 Burleson is a danger to the community, most specifically, federal agents and
20 officers, particularly law enforcement officers. If Burleson were released, he would
21 be supervised by the same federal officers who he has continually threatened to kill.
22 The only fact Burleson proffers in support of release is his health condition.¹

23
24 ¹ The Government notes that Burleson has not provided much of any evidence
documenting his health issues and the prognosis of those issues.

1 However, as Judge Leen correctly found, nothing in the record supports a finding
2 that Burleson will abide by federal court orders. Judge Leen did not simply “rely on
3 the presumption.” The Government provided numerous examples of Burleson
4 advocating violence against law enforcement, people who practice the Islamic
5 religion, President Obama, and others. Burleson’s threats, combined with the
6 strong evidence of his violent actions in this case, including his admission that he
7 had the BLM’s Special Agent in Charge’s head in in his sights, and his road rage
8 conviction overwhelmingly demonstrate that Burleson is a danger to the community
9 and that no combination of conditions could be reasonably fashioned that would
10 protect the community.

11 The fact that Burleson’s eyesight is impaired would not prevent Burleson
12 from violently resisting court orders with the assistance of others. Burleson has
13 strong connections to self-described “militia” groups in Arizona and many of those
14 who participated in the April 12, 2014 assault were from Arizona. In short,
15 Burleson and others have already demonstrated that they are willing to use
16 violence to disobey court orders.

17 Although Judge Leen did not find that Burleson should be detained as a
18 flight risk, the Government believes that the same reasons which make Burleson a
19 danger to the community support a finding that he is a flight risk. Burleson is not a
20 traditional flight risk in the sense that he is not expected to flee the country, but
21 rather a risk of armed resistance to law enforcement, including any law
22 enforcement efforts to bring him to appear in court. Burleson has already
23 disregarded the orders of this Court, by force. There is no reason to believe he
24

1 would not be willing to use force, or have others use force on his behalf, to resist
2 federal court orders or impede federal officers to his own benefit as well.

3 Burleson has done nothing to renounce or disavow the actions of his co-
4 conspirators, or renounce or disavow his own actions. All he has done is state that
5 he cannot personally resort to violence because of his health conditions. That claim
6 neither rebuts the presumption nor mitigates his continuing danger to the
7 community.

8 **WHEREFORE**, for all the foregoing reasons, the government respectfully
9 requests that the Court deny the Motion for Revocation.

10 **DATED** this 18th day of April, 2016.

11
12 Respectfully,

13 DANIEL G. BOGDEN
14 United States Attorney

15 —/s/ Steven W. Myhre
16 STEVEN W. MYHRE
17 NICHOLAS D. DICKINSON
18 Assistant United States Attorneys
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22 Attorneys for the United States
23
24

CERTIFICATE OF SERVICE

I certify that I am an employee of the United States Attorney's Office. A copy of the foregoing **Notice of Change of Address** was served upon counsel of record, via Electronic Case Filing (ECF).

Dated this 18th day of April, 2016.

---/s/ Mamie A. Ott

MAMIE A. OTT

Legal Assistant

Exhibit

A

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE PEGGY A. LEEN, MAGISTRATE JUDGE

4 UNITED STATES OF AMERICA, :
5 Plaintiff, :
6 vs. : No. 2:16-CR-00046-GMN-PAL-16
7 GREGORY P. BURLESON, :
8 Defendant. :
9

10
11 TRANSCRIPT OF DETENTION HEARING

12 March 21, 2016

13
14 Las Vegas, Nevada

15
16
17 FTR No. 3A/20160321 @ 9:47 a.m.

18
19
20 Transcribed by: Donna Davidson, CCR, RDR, CRR
21 (775) 329-0132
22 dodavidson@att.net

23
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25 (Proceedings recorded by electronic sound recording, transcript
produced by mechanical stenography and computer.)

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1 LAS VEGAS, NEVADA, MARCH 21, 2016, 9:47 A.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 THE COURT: Turning next to Mr. Burleson.

6 Who will be arguing the government's position?

7 MR. DICKINSON: I will be, Your Honor.

8 THE COURT: Mr. Dickinson?

9 MR. DICKINSON: May I approach?

10 THE COURT: Yes.

11 MR. DICKINSON: Thank you, Your Honor. I know
12 the Court's read our memo, read the indictment. We
13 incorporate both of those into our argument on
14 Mr. Burleson.

15 I'm not going to repeat everything and all the
16 quotes and all the Facebook postings.

17 I do want to hit on just a little bit of the
18 background of the salient points of Mr. Burleson's conduct
19 on the 12th. I want to focus a little bit on -- we
20 referenced the January 16th, 2015, recorded call with the
21 FBI. I want to spend a few minutes on that.

22 I want to talk about Mr. Burleson's associations
23 with other co-defendants and other self-described militia,
24 patriots, like-minded individuals both that were present in
25 the wash from Arizona on the 12th of April 2014 and others

1 that weren't, and then obviously talk about Mr. Burleson's
2 health issues. Because really the government believes
3 that's the only argument Mr. Burleson has for any
4 conditions that can be fashioned for his release.

5 And obviously we're operating under the
6 presumption based on the 924(c) counts in this case.

7 To start with, Your Honor, Mr. Burleson is a
8 self-described militia member, member of the Arizona
9 Independent Militia, which is essentially himself, but
10 worked -- has worked in the past quite a bit with other
11 militia groups in Arizona, we don't focus on this in our
12 memo, but doing border operations down in the lower Tucson
13 area, which is prevalent with these groups.

14 But fast forwarding, on April 11th and 12th, you
15 can see in some of the Facebook postings that Mr. Burleson
16 was fully aware of what's going on.

17 And it's beyond a shadow of a doubt Mr. Burleson
18 did not travel to Nevada to protest. He traveled to Nevada
19 to chest up with federal agents and was looking for an
20 armed conflict. And that's exactly what he did.

21 Mr. Burleson was not present at the staging area
22 when Mr. -- when Cliven Bundy gave his call to action to go
23 get his cattle and told Sheriff Gillespie to go get the
24 guns.

25 Mr. Burleson actually left Arizona with, he

1 says, 10 people, which is supported by the government's
2 evidence, one of which is another individual who I'm going
3 to reference later on. But the individual he drove up with
4 was a member of the Arizona First Pathfinders.

5 And they approached the area where the assault
6 occurred, where traffic's being shut down. Mr. Burleson
7 gets out of his car, engages with the other
8 co-conspirators, and gets into that wash armed with his
9 assault rifle.

10 The individual he was with also got into the
11 wash, did not take his assault rifle, but he had a handgun
12 on him and carried a gas mask.

13 Mr. Burleson approached the left side of the
14 wash. Some of the pictures -- and those are just a few
15 pictures we provided the Court. But you can see one before
16 the crowd moved up into the skirmish line where Ammon
17 Bundy's clearly looking at the defendant. He's on the left
18 side.

19 Mr. Burleson then -- I'll show you another
20 picture where the crowd was clearly moved up, and he's on
21 the left -- left skirt of the underpass, approximately 15
22 to 20 yards away from when the special agent in charge
23 approached to diffuse the situation.

24 The evidence shows, and I'll get to later,
25 Mr. Burleson admitting weaving in and out of the crowd.

1 If you go through the pictures, some of the
2 photographic pictures and the pictures taken from videos,
3 the screenshots, you can plot Mr. Burleson moving in and
4 out. He was there. He was there through the impoundment
5 and through when the cattle -- when BLM surrendered. When
6 the cattles were brought back on the range he posted
7 pictures. His quotes about victory and succeeding and
8 battle are all laid out in the government's memo.

9 And as he stated, they put BLM in a kill box.
10 Mr. Burleson's words.

11 And that's exactly what occurred that day. They
12 were surrounded by the sides. They were flanked by the --
13 on the sides of the skirts of the underpass and then the
14 gunmen on the bridge.

15 And Mr. Burleson, by his own words, was upset
16 that there wasn't any violent -- more violent encounter
17 that day. And some of the -- one of the quotes we put in
18 there how next time it's going to be different because he's
19 going to be the force to do that.

20 I just want to go forward to that January 16th,
21 2015, call. That -- the FBI had had previous interactions
22 with Mr. Burleson related to some of his activities on the
23 border with his militia groups. And that was right after
24 the road-rage incident.

25 And fair to say the FBI was concerned and

1 reached out to Mr. Burleson, just to sort of see what
2 the -- the lay of the land, so to speak.

3 The conversation with Mr. Burleson wasn't
4 exactly a probing FBI interview. That being said,
5 Mr. Burleson fully admitted his conduct that day and
6 exactly what he did to an FBI -- someone he knew was an FBI
7 agent.

8 It's somewhat chilling, Your Honor. He talked
9 about how he went down to -- or he came to Nevada because
10 BLM was stealing the land and stealing the cattle and
11 pissing people off, including him, you know, not the fact
12 that they were enforcing court orders issued by this court
13 that, quote, We went down there and started grabbing people
14 with guns. And we took everybody with weapons out of the
15 crowd. Talking about him going into the wash.

16 And the evidence supports that. The gunmen took
17 the flanks and, as the Court has mentioned, left women and
18 children and -- you don't really see the firearms right
19 there directly in front of the BLM.

20 I was kind of in charge of the left side of the
21 strategy. Mr. Burleson was on the left side weaving in and
22 out. I sighted a couple of guys, talking about the special
23 agents and the BLM law enforcement officers. Quote, Every
24 single one of them had at least two or three guns trained
25 on them.

1 Mr. Burleson said he positioned guys on the left
2 side underneath the overpasses, again supported by the
3 evidence.

4 And most chilling, as he stated, he said he had
5 the special agent in charge, who he names and describes
6 what he was wearing, sighted. He had his heads in his
7 sight.

8 And just to put that into more context, the BLM
9 special agent in charge will testify that he finally went
10 to the gate because he had to diffuse the situation. He
11 had been up, and he had heard not only the -- you know, had
12 heard there were people in the wash with firearms and on
13 the bridge, but when he started hearing that people were
14 pointing guns at federal law enforcement agents, he needed
15 to do something and he needed to do something now.

16 He didn't exactly know what he was going to do
17 when he went to that gate, but something had to be done.
18 And as he walked towards that gate, he saw the guns pointed
19 to him. And he said to himself -- he was wearing a chest
20 plate, Please just shoot me in the chest plate, don't shoot
21 me in the head. Because he wanted to get back to his
22 family.

23 That's what Mr. Burleson was doing that day. He
24 wasn't just in the wash standing there. By his own
25 admission he had the special agent in charge, who was

1 enforcing court orders, a gun pointed at his head.

2 Everything, as we've stated before, went against
3 those officers' training not to engage that day. But
4 that's what happened. And thankfully, as the Court has
5 stated, a blood bath didn't occur.

6 And then you can see Mr. Burleson just ranting
7 about what went on there, when Metro officers were quoted
8 about what they saw that day, ranting about how dare they,
9 and he -- if he sees them, he will engage them, that he's
10 Greg Burleson and he's not going to put up with it.

11 Fast forwarding, the road-rage incident is laid
12 out. And there's a picture of Mr. Burleson and what he had
13 that day. He was armed to the teeth.

14 But when he posts the victim's information,
15 which we allude to and state in our memo, he actually
16 posted the victim's information on his co-defendant Eric
17 Parker's Facebook page.

18 And that was in regards to a discussion of
19 another individual who late last year was arrested in the
20 Western District of Washington, Schuyler Barbeau.

21 Mr. Barbeau was present at Bundy Ranch and is
22 pictured.

23 At the staging area that morning, armed body
24 guard for Mr. Bundy.

25 Well, Mr. Barbeau was charged in a separate

1 weapons violation late last year in the Western District of
2 Washington.

3 Well, that got Mr. Burleson and his
4 co-defendants spun up because this was going to be -- the
5 federal government's coming now, they got Barbeau because
6 he was at Bundy Ranch, and they're getting everybody else.

7 So that's sort of what -- this Facebook posting.
8 And then Mr. Burleson was upset because he's like, Hey,
9 Barbeau, you know, had it coming. If he was dumb enough to
10 possess an unregistered weapon, so be it.

11 But look what happened to me. I had this
12 weapons violation, and no one came to my, you know,
13 defense. And then he's posting about his victim's
14 information.

15 This also goes to Mr. Burleson's association
16 with his co-defendants in this case. Whether it be the
17 person he rode up there with, the guy with the gas mask
18 from -- who he remains in very close contact with, from
19 October to December 2015, 380 phone calls between them,
20 totalling 13 and a half hours.

21 That individual, when Mr. Bundy was arrested
22 earlier this year, took to Facebook and was posting about
23 how the local sheriffs and the state representatives in
24 Arizona and Utah need to come together and not let people
25 get prosecuted or taken into custody for what occurred at

1 Bundy Ranch.

2 That also goes -- you know, we lay forth some of
3 the information regarding Mr. Burleson's participation and
4 some of the mosque protests in Phoenix. Not to, oh, lock
5 him away because he's exercising his First Amendment rights
6 in a mosque protest.

7 One, because he'd come on that protesting with
8 his violent rhetoric about burning mosques goes to
9 Mr. Burleson's propensity to violence. But, two, he was
10 out there at those protests with Jon Ritzheimer who, while
11 not present at Bundy Ranch, was later present in what
12 occurred in Oregon at the takeover up there, but he's also
13 a member of -- we reference in our indictment Operation
14 Mutual Aid, but then it changed and morphed into Operation
15 Mutual Defense. And he's a board member on that with Ryan
16 Payne.

17 The message and purpose of that group is when
18 they view things of being -- the federal government
19 overreach, if the person being -- you know, for example,
20 Mr. Burleson and the Bundys want their help, they ask for
21 it, and they will come and will chest up with the federal
22 government.

23 Mr. O'Shaughnessy, co-defendant, was out there.
24 Mr. Cooper was out there. The person -- the guy with the
25 gas mask was out there. These are the people he associates

1 with. And then obviously the violent rhetoric associated
2 with those.

3 And those were in October, Your Honor, so not
4 too far away, which again goes back into -- or which ties
5 into his health, which is -- whatever is going on with
6 Mr. Burleson and his eyesight is a recent occurrence.

7 You know, the Obama posts we cite in our memo
8 just again to show his propensity to violence.

9 Start now on the medical issues, Your Honor.
10 You know, we had some information. We noted it in our
11 memo. And that was before he even appeared in Arizona that
12 something was going on with his eyesight, which I note he
13 references in a November 29th post almost mocking law
14 enforcement that he's been prescribed steroids and they
15 better approach him with caution, it's best to steer clear
16 and not make aggressive contact with him.

17 And, you know, but the records provided to the
18 Court, they say something he's had a procedure, he has
19 eyesight issues, he's obviously being prescribed medicine.
20 But that's all that's been provided to the Court.

21 I'm not a doctor, so I don't know what the
22 prognosis is or anything else related to that.

23 That being said, even if Mr. Burleson can't see
24 right now, the overwhelming weight of the evidence and his
25 violent rhetoric -- and not just the rhetoric, but he did

1 it. He's fully, fully advertising that to anybody that
2 will listen, including the FBI. I went out there and
3 chested up with the government and pointed my gun at law
4 enforcement agents. And I'll do it again.

5 And even if he, as we sit here today, would be
6 unable to stand at a wash, he can still insight, he can
7 still insight other people. He still associates with these
8 people. Not just the people in this indictment.

9 There were numerous people, based on evidence,
10 that came from Arizona. There's a large, quote/unquote,
11 militia/patriot group community in Arizona.

12 And the government's not saying that everyone
13 involved in those groups is somehow going to go out and
14 cause violence. But there's been enough rhetoric. And
15 there's nothing to say that Mr. Burleson won't associate
16 with those individuals to prevent coming to court or to
17 hole up somewhere, you know, because, in his own words,
18 Never mess with a man who wants -- or, Never mess with a
19 man who lives to die in battle. And that's Mr. Burleson.

20 Your Honor, just to go into that, there's been,
21 almost from right after Bundy Ranch through today,
22 increasing rhetoric from individuals that participated at
23 Bundy Ranch how they're going to protect each other.

24 Mr. Burleson references that on May -- the May
25 13th, 2004, post. Quote, If you arrest just one -- or, If

1 you arrest just one person from Bundy Ranch, quote, we will
2 quote -- I'm sorry. If you arrest just one person from
3 Bundy Ranch, we will, quote, burn you to the ground, that
4 includes your wife and children too.

5 All the way to Ryan Payne in December, going
6 back to the Barbeau arrest in the Western District of
7 Washington, Mr. Payne takes to Facebook to post about this.

8 He talks a little bit about Barbeau being
9 arrested. Then he says, quote, Those who are at the ranch
10 were made a promise by the leadership in their
11 participation in that great effort. As long as your
12 actions are lawful, according to the constitution, and
13 upright in morality, you will be protected. We must not
14 let this promise be without conviction.

15 He goes on. Watch one another's sixes. And at
16 some point we're going to have to think about not allowing
17 one another to be arrested. The time to assemble must be
18 coming in multiple locations to act as reserves in order to
19 directly protect each other. If this shows itself as part
20 of a larger effort, then we must consider that and are
21 swinging into full action against the community and respond
22 accordingly.

23 That's who Mr. Burleson associates with. That's
24 Mr. Burleson's history and characteristics, Your Honor.

25 There is no conditions or combination of

1 conditions that this Court can impose that would protect
2 the community or that would assure Mr. Burleson would
3 appear before Your Honor or Chief Judge Navarro in this
4 case. With or without whatever is going on with
5 Mr. Burleson's eyesight.

6 Unless the Court has any questions, I'll submit.

7 THE COURT: Mr. Jackson, have you had an
8 opportunity first to go over the reports with your client,
9 those that were prepared in Arizona and here?

10 MR. JACKSON: Yes, Your Honor.

11 THE COURT: Is there anything in either of the
12 reports that you wish to note for the record as inaccurate?

13 MR. JACKSON: No.

14 THE COURT: Let me hear from you on the merits
15 then, please.

16 MR. JACKSON: Well, I disagree with Assistant US
17 Attorney on a couple of things, as far as whether or not
18 there are conditions that can protect the population from
19 my client, Mr. Burleson.

20 Your Honor can take a look at Mr. Burleson right
21 now. You notice he was brought in on a wheelchair.

22 When I first went to see him in the lockup, the
23 marshals had to walk him over to a chair because he
24 couldn't see where it was.

25 Now, if the prosecutor doesn't think he's blind,

1 I can supply information of that. He's totally blind.
2 Can't see a thing.

3 That condition has -- started back in about
4 August of this year, and has progressed until January. He
5 had surgery several weeks ago. And there's no hope he's
6 going to get his sight back. There's going to be a magic
7 cure where he's going to see again.

8 He isn't going to be driving a car out to
9 Bunkerville, or he isn't going to be able to be grabbing a
10 gun and running after and shooting people. He's blind.

11 Now, whether he can use a keyboard or not, we
12 can restrict him from getting a typewriter or an Internet
13 computer. We can make that a condition. So he won't be
14 able to insight people by getting on the Internet.

15 Whether he was two years ago or a year and a
16 half ago or even six months ago saying things he shouldn't
17 say, and I'm not disputing that, some of which were
18 protected by free speech, some of it may have been
19 borderline, right now there's no chance that he can hurt
20 anybody because of his medical condition.

21 He not only has a serious problem with his
22 eyesight, and something that can never be healed, he also
23 has seizure disorders.

24 And the other thing, he's not getting any
25 treatment, none at all in the jail. He's not getting his

1 seizure medication. He's not getting his eyedrops, and
2 he's not getting follow-up treatment from his eye doctors,
3 which he could get if he were out.

4 You know, I suggested several conditions that
5 would meet what the bail reform statute says are
6 appropriate conditions that would protect society and make
7 sure that he's not going to flee.

8 Restrict his movement to Phoenix, Arizona, where
9 he lives in a small apartment where his mother comes in and
10 takes care of him, brings him his groceries, checks in on
11 him everyday. His mother and significant other, who I've
12 spoken to and I believe pretrial has.

13 His mother is in contact with me by email and
14 also has talked to my investigator and is accepting that
15 (inaudible). He's 70-some years old, which he sees him
16 everyday.

17 But restrict his movement to Phoenix, Arizona,
18 and/or Clark County for legal appearances when he needs to
19 be brought up here.

20 Surrender any passport he has. I don't even
21 know if he has one. But if he does, he can give it up.

22 Surrender any firearms or any weapons in his
23 possession.

24 Forbid the defendant from communicating with any
25 other of the co-defendants. He's willing to do that.

1 He doesn't want a communication with them. He
2 was a very minor participant in this incident.

3 He didn't own that ranch. He didn't have any
4 communication with the people on the ranch before this
5 happened.

6 He thought there may have been an injustice
7 done. He went up to be of assist to the people there. But
8 he's willing to abide by any condition. He'll stay away
9 from the other people involved in this indictment. And
10 that can be strictly monitored.

11 Forbid the defendant from using the Internet
12 while on pretrial release. Keep him from communicating
13 with other people commun- -- convict him from doing any
14 insighting or anything that the government might be worried
15 about.

16 Forbid him from making stupid statements over
17 the Internet. You know, some of the statements are similar
18 kind of hyperbolic statements made, you know, for the last
19 40 years by every radical group I've seen, from the Black
20 Panthers to the Weathermen to the -- all, you know, every
21 group.

22 Even now we have political candidates now making
23 stupid statements.

24 But when people get their emotions in control
25 instead of the reason they make stupid statements how much

1 they hate the police and how tough they're going to be.

2 But if we look at the facts of this case,
3 defendant never shot anybody. He never even fired any
4 shots. He had a gun. He was licensed to have a gun.

5 As far as the defendant's criminal record, he
6 had an arrest for road rage. What happened with that case?
7 He was put on probation.

8 Now, if he was really, really a bad guy, and he
9 was put on that probation on that case after this incident
10 at the Bundy Ranch happened, he was really a bad guy, they
11 would have looked at, you know, all the bad things he's
12 done and said, you know, Mr. Burleson, you're a pretty bad
13 guy, you're not worthy of probation.

14 And if he was really having problems on
15 probation, what would have happened? What happens when
16 you're on probation if you're causing trouble, if you're
17 using a weapon or threatening people or breaking the law?

18 Your probation officer calls a hearing and they
19 say, Judge, he's been causing trouble. We want you to
20 revoke his probation. But his probation wasn't revoked.

21 Look at his criminal record over 52 years.
22 What's the bottom line? Has he spent years in jail?
23 Months in jail? He spent a total of 11 days in jail in 52
24 years. That's how much he spent for this terrible,
25 horrible criminal record. 11 days in jail he spent before

1 this offense.

2 Now he's in -- locked up in federal prison, in
3 federal detention, blind, has a seizure disorder. He's not
4 getting his medicine. This case may go on for years. It's
5 not going to go to trial, I believe, on May 2nd, even
6 though it's been set then, if we've got a terabyte of
7 information to go through. The government says they've
8 interviewed 150 witnesses.

9 I haven't got any discovery at all. The
10 government argues all the facts of the case from what I've
11 read in the indictment. I haven't had a chance to
12 cross-examine any of these witnesses. And as far as I
13 know, the defendant's still presumed innocent.

14 From what I know, the defendant hasn't shot
15 anybody, killed anybody, even fired his weapon. But the
16 government says he must be detained, this blind man in a
17 wheelchair. He's a danger to the community.

18 He said some bad things. He associates with
19 some bad people. Because he associates with people,
20 because he's said things, detain him.

21 The Eighth Amendment is a real amendment. It
22 protects people's rights to be released.

23 The 1984 Bail Reform Act protects people's
24 rights to be released.

25 If anybody is not a danger to escape, a man in a

1 wheelchair who's blind, he's not going to get in his
2 wheelchair and start wheeling out the door and escape. Or
3 if you let him go, let him go back down and have his mother
4 come and pick him up from the lockup and take him down to
5 Phoenix, he's not going to get on his wheelchair and get on
6 an airplane and go without people knowing it.

7 He's not going to get on his wheelchair and go
8 back up to the Bundy Ranch and start committing violence.
9 He can't see.

10 Now, the only reason to keep him detained is to
11 punish him pretrial without a conviction. To keep him
12 locked up without a conviction in violation of the Eighth
13 Amendment.

14 Yeah, there may be some evidence -- there may be
15 evidence suggesting he did this. But he's got a right to
16 go in a court, in a court of law, and challenge that
17 evidence.

18 I submit that under the facts of this particular
19 case -- I've never seen one stronger, where you've got a
20 blind man in a wheelchair with other medical disorders,
21 that he does not present a danger to the community or
22 danger to flee. And that's a standard.

23 I think he should be released at this time with
24 the conditions I have suggested. The conditions I have
25 suggested are more than enough to make sure that he's not

1 going to be a problem. Or any other conditions the Court
2 would suggest.

3 And I'll ask the Court to -- any questions the
4 Court has. I do have a letter from -- or an email from the
5 mother that she sent me just recently, if the Court wants
6 to see it, verifying some of this information.

7 THE COURT: I'll accept your representation as
8 an officer of the Court, Mr. Jackson.

9 MR. JACKSON: Okay. Does the Court have any
10 questions?

11 THE COURT: No, sir.

12 MR. JACKSON: Thank you.

13 THE COURT: Mr. Burleson, I also agree that --
14 with Mr. Jackson, that there are conditions of release that
15 may be imposed to assure you would not flee. However --

16 THE DEFENDANT: Can you repeat that, Your Honor?

17 THE COURT: I agree with your lawyer, that I
18 could probably impose conditions that would be stringent
19 enough to reasonably assure that you would appear in court
20 in this case. But with respect to your risk of
21 reoffending, I am going to order you detained.

22 You're charged with crimes of violence involving
23 use of weapons for which the law creates a rebuttable
24 presumption that I should detain you.

25 THE DEFENDANT: Yes.

1 THE COURT: And in this case -- you're charged
2 with the law creates what is called a rebuttable
3 presumption that I should detain you.

4 In this case the weight of the evidence is very
5 strong. Both video and photographic evidence depicts your
6 armed participation in the advance on the BLM impoundment
7 site on the day of April the 12th, 2014.

8 You are not being prosecuted for your speech or
9 your beliefs but for your conduct. Your speech and your
10 interviews, including a tape-recorded conversation with an
11 FBI agent, acknowledge what you did and that you were proud
12 of what you did.

13 You made statements before you ever went to
14 Bunkerville, the month before, that it's time to start
15 shooting cops.

16 THE DEFENDANT: Your Honor --

17 THE COURT: Some of your most inflammatory
18 statements were made afterwards about being a berserker,
19 about wanting to die in battle. Continually you made
20 statements along those lines and about what would happen if
21 anyone came to arrest any of the people who were involved
22 in the Bunkerville incident, about burning people to the
23 ground, including their wives and their children.

24 You bragged about having federal agents in your
25 sites.

1 And so although you're blind, I do not believe
2 for a minute that these views that you have espoused for
3 years are going to go away and that all of a sudden you
4 will abide by federal court orders.

5 And for those reasons you are ordered detained
6 pending further proceedings.

7 You have the right to appeal my order to Judge
8 Navarro.

9 You're remanded to the custody of the Marshals
10 Service.

11 (The proceedings concluded at 10:15 a.m.)

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I certify that the foregoing is a correct
transcript from the electronic sound recording
of the proceedings in the above-entitled matter.



4/12/16

Donna Davidson

Date